

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

GROUPON, INC.

Plaintiff,

v.

SUNG SHIN,

Defendant.

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Case No. 1:21-cv-06082

Honorable Judge Charles P. Kocoras

DECLARATION OF VIVEK PATEL

I, Vivek Patel, declare as follows:

1. I am the Chief Product Officer of Yelp Inc. I have worked for Yelp for over 12 years, since April 2009.

2. As the Chief Product Officer, I oversee all aspects of Yelp's product management function, including design, data science, and user research, among other areas. In addition, I help to ensure that the development of Yelp's products is aligned with Yelp's strategic direction, especially its go-to-market strategy and focus on both business owners and consumers. I make this declaration based on personal knowledge.

3. I have reviewed the portions of Groupon, Inc.'s complaint against Sung Shin and its application for a temporary restraining order against Mr. Shin that describe Yelp's business. Those portions contain significant misstatements regarding Yelp's business, Yelp's relationship to Groupon, Mr. Shin's role at Yelp, and the nature of internet advertising generally.

Yelp

4. Yelp, founded in 2004, owns and operates Yelp.com, a popular social networking and search website, mobile website, and related mobile applications (collectively, "Yelp") for users to share information about their communities. Yelp, among other things, provides and publishes a forum for members of the public to read and write reviews about local businesses, services, and other entities including non-profits and government agencies.

5. Yelp is available to the public at no charge and without any registration requirement. Those who choose to register (by creating an individual consumer account, which requires only providing a first and last name, zip code, and a functional e-mail address, and agreement to Yelp's Terms of Service and Privacy Policy) can write reviews, submit photos, and obtain access to a broader range of features on Yelp, such as message boards, communication tools, and other free services. For example, Yelp's registered users can write reviews and submit photos about schools, dentists, childcare providers, restaurants, charitable organizations, government offices, parks, and places of worship—to name just a few categories of eligible establishments. Yelp user reviews and photos can be viewed by millions of other users when making a wide range of consumer and other decisions. Any member of the public with access to the internet can view these reviews. Yelp is also a search engine, which allows users to find businesses by entering search queries (like “plumbers” or “delicious chicken tacos” or “Episcopal Church”) and specifying a geographic location (such as an address, city, or neighborhood)—akin to a modern day Yellow Pages.

6. Yelp also offers free accounts to businesses, which allow them to provide additional information about themselves, message reviewers directly or publicly, and view statistics about their Yelp page (such as how many people viewed their Yelp profile or contacted them through Yelp's mobile applications). To obtain a free business account and link it to a particular business on Yelp, the business user must go through an account registration process and then “claim” the business. Once a business representative claims a business, he or she may post public responses to reviews on behalf of business, which are displayed directly below the relevant review and are visible to any visitor to Yelp.

7. To support its free services, Yelp sells advertising packages to enable businesses or service providers to promote their offerings on Yelp.com through the display of ads. To promote integrity and objectivity, and as stated on Yelp's website and in its contracts with advertisers, Yelp advertisers cannot delete, change, or re-order ratings or reviews. Yelp's ads may incorporate

content supplied by the advertising business, and/or review snippets and ratings supplied by Yelp's registered users.

8. Over a decade ago, Yelp experimented with an advertising product called "Yelp Deals", offering daily deals from businesses. Yelp, however, later pivoted away from that product. To the best of my knowledge, Yelp has not committed any product management resources toward Yelp Deals since at least 2017, and it is currently responsible for less than 1% of Yelp's overall net revenue. In fact, in 2020, Yelp Deals was responsible for less than .057% of Yelp's overall net revenue. I expect it to be even less than that for 2021.

Groupon

9. Groupon is not an open social networking and search website like Yelp. Instead, Groupon is a subscription-based service that merchants and consumers both have to sign up for in order to use. For example, on Groupon's website, Groupon states that it has "a loyal customer base of 34 million active customers" and it encourages businesses to "join the more than one million merchants to date who've used Groupon to find new customers." See <https://about.groupon.com//> As Groupon alleges in its complaint and in its application for a temporary restraining order, the "core" of its business is "discounted vouchers that customers can purchase for merchant businesses" (cleaned up)—akin to modern day coupons. Compl. ¶ 73, TRO MPA p. 19.

10. Yelp's and Groupon's differing purposes and business models have important implications for the differing types of consumers and advertisers that each attracts. Yelp strives to host a Yelp page with consumer information as to every brick and mortar business in the country, regardless of whether that business ever claims the Yelp page, is a Yelp advertiser, or generates any revenue for Yelp at all. And businesses who claim their Yelp page and choose to advertise on Yelp are seeking to connect with a broad swath of consumers who have either already reviewed their businesses or who may be searching for businesses in a particular category and a specific locale. These consumers tend to be convinced or close to convinced that they want to make a purchase of some kind. In fact, a 2019 survey conducted by the third party SurveyMonkey showed that 51% of Yelp users transact with the business they find within a day, and 90% transact within

a week. See <https://blog.yelp.com/businesses/study-shows-97-of-people-buy-from-local-businesses-they-discover-on-yelp/>.

11. Groupon, on the other hand, pitches its services to previously subscribed or potentially subscribed consumers who are specifically looking for and motivated by a discounted deal, and it attempts to sell businesses on the prospect of potential long-term benefits from each discounted deal in the form of repeat business. For example, Harvard Business School published an article describing two reasons why merchants might choose to sign up and partner with Groupon: “first, Groupon offers to pay the cut of the merchant immediately after customers made the payment on the website, and second, Groupon promises long-term benefits from each deal in the form of repeated business.” (Cleaned up.) See <https://digital.hbs.edu/platform-digit/submission/the-rise-and-demise-of-groupon-the-importance-of-satisfying-both-sides-of-a-two-sided-network/>. Businesses who advertise on Groupon are, by virtue of the very nature of Groupon’s platform, attracting customers specifically looking for an initial discount for a good or service, whether they are ready to buy or not. Not every business wants to discount, but those that do will attract new customers specifically looking for a discount.

12. The exhibits to Groupon’s complaint underscore these differences. For example, Exhibit G to Groupon’s complaint (D.N. 1-2, page 53) purports to be a December 2017 snapshot created using data from a company called Comscore that shows “mobile reach”—based on mobile browsing and mobile application—of various websites. Comscore does not evaluate potentially competitive relationships between websites; instead, it measures audience demographics and performance for websites—similar to the Nielsen ratings for television shows. See <https://www.ezoic.com/comscore-rankings-how-they-work/>. And the heading of the exhibit states that the websites described are “leading local guides,” but it does not explain what the “guides” are for—in Groupon’s case, it would logically follow to be a guide for local businesses that offer initial discounts, in Yelp’s case, a plenary guide for business information. Likewise, neither of the third party analyst reports attached to the complaint (Exhibits H and I, D.N. 1-2, pages 55-56 and 58) actually states that Yelp and Groupon are competitors.

13. The only exhibit to the complaint that describes Yelp and Groupon as “competitors” appears to be a single, undated, partially redacted slide extracted from a larger Groupon PowerPoint (Exhibit F, D.N. 1-2, page 53). But nothing on that slide describes any Yelp advertising product. It describes certain Yelp Instagram accounts in a #MeetTheOwner brand public relations effort. (Instagram is a third party social media website.) To my knowledge, no one on Yelp’s product management team had any connection to those branding efforts whatsoever.

14. Tech employees, consumers, and businesses alike understand that Yelp and Groupon are not meaningful competitors, as reflected in a simple Google search. For example, a Google search for “Groupon competitors” indicates the following top ten Groupon alternatives and competitors, which consists of other discount subscription-based services—deal sites—like Groupon: Vagaro, Travelzoo, dealsaver, Localflavor, HalfOffDeals, Gilt, Deals.Today, and Glocal. *See*

<https://www.google.com/search?q=groupon+competitors&oq=groupon+com&aqs=chrome.0.69j59j69i57j0i10j46i175i199i512j0i51213j69i60.14413j0j9&sourceid=chrome&ie=UTF-8>.

15. A Google search for “Yelp competitors”, on the other hand, includes results for Google search itself, Bing, Facebook Recommendations, Zagat, TripAdvisor, and Angi, and the top five are Tripadvisor, Foursquare, Yahoo, OpenTable and Yodle. In fact, Yelp has for years fought a well-publicized battle against its actual main competitor, Google search, because of Google’s anticompetitive practices, and Yelp was recently subpoenaed by both the United States Department of Justice and Google in connection with the Department of Justice’s ongoing anti-trust lawsuit against Google. *See*

<https://www.google.com/search?q=yelp+competitors&oq=yelp+c&aqs=chrome.0.69i59j0i512j0i433i512j0i512j69i57j0i51215.1499j0j15&sourceid=chrome&ie=UTF-8>;

<https://www.theverge.com/interface/2020/8/26/21401031/yelp-competition-google-stoppelman-interview-basecamp-epic-apple>;

<https://fuentitech.com/google-files-document-production-demand-for-one-of-the-biggest-critics/276277/>.

Mr. Shin's Role at Yelp

16. Yelp hired Mr. Shin as its Vice President of Product Management, Multi-Loc (meaning businesses with multiple locations). I am his manager. For example, his new team at Yelp recently launched a product called Yelp Store Visits, which is a machine learning product and one of the first products at Yelp deliberately focused on national and regional brands. It gives these brands a great deal of insights, like the percentage of users who visit their physical location one day after seeing or clicking a Yelp ad. See <https://blog.yelp.com/news/multi-loc-ad-products-yysv-showcase-ads/>.

17. Another product geared toward the Multi-Loc space is Yelp Audience Network, which is a form of multi-platform advertising. Here's how that works: let's say you search for the nearest coffee place on Yelp for a cold brew coffee. For a brand like Starbucks, that also sells retail cold brew customer, you are a potentially valuable customer. Yelp Audiences allows Starbucks to reach you off of Yelp—say, while you are reading an article on nytimes.com—with relevant ads. See <https://blog.yelp.com/news/yelp-svp-and-head-of-gtm-national-discusses-yelp-audiences/>.

18. Mr. Shin will have no responsibilities whatsoever relating in any way to Yelp Deals. As noted above, Yelp has not committed any project management resources to it since at least 2017.

Internet Advertising

19. In general, Yelp's advertising products are performance-based, meaning that Yelp's advertising platform matches to individual consumers through auctions priced on a cost-per-click (or "CPC") basis. At least some of Groupon's advertising products are also allegedly performance-based, at least according to its complaint and application for a temporary restraining order. But Yelp and Groupon are not competitive with one another simply because they each offer performance-based advertising or use "metrics" for measurable advertising results.

20. Performance-based advertising is one of the most common forms—if not the single most common form—of advertising on the internet, inasmuch as it allows websites to make money without charging their users any upfront fees. Websites often offer advertising on a CPC or other

metric-based basis. Amazon, eBay, Google Adwords, Yahoo!, and Microsoft each use a CPC model, just to name a few well-known brands that connect merchants, on the one hand, with consumers, on the other. Indeed, performance-based advertising is so well known—and associated with internet advertising—that there is a Wikipedia article describing it in detail. *See* https://en.wikipedia.org/wiki/Performance-based_advertising.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 18, 2021 in Tiburon, California.

Vivek Patel

Vivek Patel